

The Potential Impact of the Transatlantic Trade and Investment Partnership (TTIP) on public health

Il potenziale impatto del partenariato transatlantico sul commercio e gli investimenti (TTIP) sulla salute pubblica

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ABSTRACT

This article aims to examine the potential health effects of the Transatlantic Trade and Investment partnership (TTIP). Our review indicates that, although proponents of the TTIP claim that the treaty will produce benefits to health-enhancing determinants such as economic growth and employment, evidence shows that previous trade liberalization policies are associated with increasing economic inequities.

By reducing Technical Barriers to Trade (TBT) and by promoting increased cooperation between US and EU governmental agencies in the pharmaceutical sector, the TTIP could result in improved research cooperation and reduced duplication of processes. However, the TTIP chapter on Intellectual Property (IP) and Trade-Related Aspects of Intellectual Property Rights (TRIPS) that expand and extend patent monopolies, and delay the availability of generic drugs, are likely to cause underutilization of needed medications among vulnerable populations.

The TTIP's Investor to State Dispute Settlement (ISDS) arbitration system, a mechanism that allows transnational companies (TNCs) to sue governments when a policy or law reduces the value of their investment, is likely to generate a negative impact on regulations aimed at increasing access to healthcare, and reducing tobacco, alcohol consumption, and diet-related diseases.

The Sanitary and Phytosanitary Standards (SPS) of the TTIP is expected to weaken regulations in the food and agricultural sectors especially in the EU, with potentially negative effects on food safety and foodborne diseases.

Finally, the ISDS is likely to infringe the ability of governments to tackle environmental problems such as climate change deemed to be the most important global health threat of the century.

Our review concludes by discussing policy implications and the effect of the TTIP on democracy, national sovereignty and the balance of power between large TNCs and governments. It also discusses the adoption of an "evidence-based precautionary principle approach" in dealing with the health impact of Free Trade Agreements (FTAs) as well as the harmonization of regulations, norms, and standards toward stronger health and environmental protection.

Keywords: trade and health, health policy, European Union, United States

RIASSUNTO

Scopo di questo articolo è esaminare i potenziali effetti sulla salute del Partenariato transatlantico sul commercio e gli investimenti (*Transatlantic Trade and Investment Partnership*, TTIP). La presente analisi dimostra come, nonostante i promotori del TTIP sostengano che il trattato produrrà effetti vantaggiosi su fattori in grado di migliorare la salute, quali la crescita economica e l'occupazione, l'evidenza storica documenta che le politiche di liberalizzazione commerciale tendono a incrementare le disuguaglianze economiche.

Riducendo gli ostacoli agli scambi commerciali (*Technical Barriers to Trade*, TBT) e promuovendo una maggiore cooperazione tra le agenzie governative statunitensi ed europee nel settore farmaceutico, il TTIP potrebbe portare a una migliore cooperazione nella ricerca farmacologica e a una riduzione della duplicazione dei processi. Tuttavia, il capitolo del TTIP sulla proprietà intellettuale (*Intellectual Property*, IP) e sugli aspetti commerciali dei diritti di proprietà intellettuale (*Trade-Related Aspects of Intellectual Property Rights*, TRIPS) ha lo scopo di espandere ed estendere i monopoli di brevetti e, quindi, ritardare la disponibilità di farmaci generici in campo commerciale, causando un sottoutilizzo di farmaci necessari tra popolazioni vulnerabili.

Il sistema del TTIP di risoluzione delle controversie tra investitori e singoli Stati (*Investor to State Dispute Settlement*, ISDS), che consente alle corporazioni transnazionali (TNC) di citare in giudizio i governi ogniqualvolta un decreto, o una legge, sia in grado di ridurre il loro profitto, potrebbe avere un impatto negativo sullo sviluppo di riforme volte a incrementare l'accesso alle cure sanitarie e a ridurre il consumo di tabacco, alcol e alimenti insalubri.

Si prevede, inoltre, che le misure sanitarie e fitosanitarie (SPS) previste dal TTIP abbiano il potenziale effetto di indebolire le norme riguardanti la sicurezza nel settore alimentare e agricolo, in particolare nell'Unione europea, con effetti potenzialmente negativi per quanto riguarda la prevalenza di malattie di origine alimentare.

Infine, la clausola dell'ISDS rischia di violare la libertà dei governi di promuovere accordi e leggi sulla protezione della salute rispetto a rischi ambientali come il cambiamento climatico, ritenuto la più grande minaccia del secolo per la salute globale.

Questa rassegna si conclude con una discussione sulle implicazioni politiche e gli effetti del TTIP sulla democrazia, la sovranità nazionale e l'equilibrio di potere tra le grandi multinazionali e i governi. Si discute anche dell'adozione di un "approccio precauzionale basato sull'evidenza" nell'analizzare l'impatto degli accordi di libero scambio (*Free Trade Agreements*, FTA) sulla salute, nonché l'armonizzazione di regolamenti, norme e standard verso una maggiore protezione della salute e dell'ambiente.

Parole chiave: commercio e salute, politica sanitaria, Unione europea, Stati Uniti

INTRODUCTION

Since the G8 meeting in Northern Ireland in 2013, the European Union (EU) and the United States of America (USA) have been negotiating the Transatlantic Trade and Investment Partnership (TTIP).¹ The TTIP, a companion trade agreement to the Trans-Pacific Partnership (TPP) between eleven Pacific Rim countries and the USA, is part of an international trade agenda aimed at furthering policies of trade liberalization worldwide. Some authors, however, consider the TTIP rather as a geopolitical project of the USA in the context of its economic competition against China and the other members of the BRICS (Brazil, Russia, India and South Africa) group of countries.^{2,3} The TTIP differs from previous Free Trade Agreements (FTAs) in several respects. First, it is the largest ever FTA as it will affect countries that account for 50% of global Gross Domestic Product (GDP). Second, it is designed not only to reduce trade tariffs, but also to homogenize regulations, standards and investor protections between interested nations. Proponents of the TTIP claim that this agreement can become a major stimulus for economic growth, trade and employment as well as a major vehicle for post 2008 recession recovery.⁴⁻⁶ Opponents argue that the TTIP is essentially an investor protection treaty that will eventually enhance the power and wealth of large transnational companies (TNCs), undermine democracy, weaken health-related regulations and produce a negative impact on population health.⁷⁻⁹ The aim of this article is to review the potential impact of the TTIP on public health. First, we assess how this policy can affect health-enhancing determinants such as economic growth and employment. Then, we examine the possible prospective effect of the TTIP on four categories of health outcomes: access to medicines and healthcare, tobacco and alcohol consumption, diet-related diseases and agriculture and environmental health. Finally, we address the potential influence of the TTIP on democracy and national sovereignty and discuss policy implications for the protection and promotion of population health.

THE TTIP, ECONOMIC GROWTH AND EMPLOYMENT

Since the creation of the General Agreement on Tariffs and Trade (GATT) in 1947, economic growth has historically been the rationale and the justification behind trade liberalization – the reduction of trade barriers – and the development of new FTAs.¹⁰ Trade liberalization policies that increase export opportunities to foreign markets, lower the cost of imported goods and attract foreign investment can, in theory, promote economic growth.¹¹ Income generated from trade policies may, in turn, lead to better health given the historical link between GDP per capita and life expectancy across nations.¹²

The belief that the TTIP would produce a significant economic benefit for the EU as well as the USA is indeed supported by a study commissioned by the European Commission (EC). The Center for Economic Policy Research (CEPR) estimated that the TTIP can increase the size of the EU economy by around €20 billion euros, about 0.5% of its Gross Domestic Product (GDP) and the USA by 95 euros billion (0.4% of GDP).⁶ Another study published by the Austrian Foundation for Development Research (OFSE), although characterizing the potential economic benefits of the TTIP as “overly optimistic”, confirmed these economic growth projections.¹³ Such encouraging estimates have not been supported by an investigation by the Global Development and Environment Institute, however, which concluded that the TTIP would lead to a contraction, instead of an increase in GDP.¹⁴ There are also several important limitations for the use of GDP as a measure of both progress and national welfare,¹⁵ given its diminishing returns in promoting longer life expectancy in wealthy nations¹⁶ and its impact on the environment.^{17,18} Moreover, the impact of trade policies on population health, especially in wealthy nations, largely depends on their distributional effects: income-generating reforms can lead to better health to the extent that such income “trickles down” to the lower socio-economic strata of the population leading to a reduction of income inequality.^{19,20}

Trade liberalization policies, however, have been associated with widening economic inequalities, rather than vice versa. Although proponents of the TTIP claim that the treaty will produce benefits not only to economic growth, but also to employment and productivity,²¹ in reality trade liberalization policies have so far shown to create a few “winners”, such as large TNCs, which account for about two thirds of trade worldwide, and far too many “losers” especially in low-skilled occupations.²²⁻²⁴ Evidence from the North American Free Trade Agreement (NAFTA), that facilitated the penetration of TNCs into foreign markets, but reduced employment and wage levels in the USA especially in the manufacturing sector,²⁵ corroborates the hypothesis that trade liberalization tend to produce regressive distributional effects.

THE TTIP AND DETERMINANTS OF HEALTH

In order to analyse more specifically the health effects of the TTIP, we decided to examine the following categories of risk factors or determinants of health:

- access to medicines and healthcare;
- tobacco and alcohol consumption
- diet-related diseases and agriculture;
- environmental health.

	 ACCESS TO MEDICINE AND HEALTHCARE	 TOBACCO AND ALCOHOL CONSUMPTION	 DIET-RELATED DISEASES AND AGRICULTURE	 ENVIRONMENTAL HEALTH
TECHNICAL BARRIERS TO TRADE (TBT)	<ul style="list-style-type: none"> ↑ Research cooperation and reduced duplication of processes 	<ul style="list-style-type: none"> ↑ Imports of alcohol products ↑ Imports of tobacco products ↑ Alcohol and tobacco consumption 		
INTELLECTUAL PROPERTY (IP) AND TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS (TRIPS)	<ul style="list-style-type: none"> ↑ Price of prescription drugs ↓ Access to prescription drugs 			
TRADE IN SERVICES (TIS)	<ul style="list-style-type: none"> ↑ Privatization of healthcare services ↓ Access to healthcare services 			
INVESTOR TO STATE DISPUTE SETTLEMENT (ISDS)		<ul style="list-style-type: none"> ↓ Tobacco advertising restrictions ↑ Tobacco smoking prevalence ↓ Alcohol advertising restrictions ↑ Alcohol consumption 	<ul style="list-style-type: none"> ↓ Regulations and labelling systems of food products ↑ Consumption of ultra-processed products ↑ Prevalence of obesity, diabetes and diet-related chronic diseases 	<ul style="list-style-type: none"> ↓ Regulations on extraction, transportation and exportation of fossil fuels ↑ Diseases of the lungs, liver, kidneys, blood and brain ↑ Greenhouse gas emissions ↑ Climate-change related mortality and morbidity
SANITARY AND PHYTOSANITARY STANDARDS (SPS)			<ul style="list-style-type: none"> ↓ Regulations on additives, contaminants, toxins or disease-causing organisms in food, beverages, feedstuffs, plant and animal-carried diseases ↑ Prevalence of food-borne diseases 	

Table 1. TTIP provisions and determinants of health.

Tabella 1. TTIP: disposizioni e determinanti della salute.

ACCESS TO MEDICINES AND HEALTHCARE

The TTIP is likely to affect both access to medicines and access to healthcare. By reducing Technical Barriers to Trade (TBT) and by promoting increased cooperation between institutions such as the European Medicines Agency (EMA) and the Food and Drug Administration (FDA), the TTIP could result in improved research cooperation and reduced duplication of processes.^{10,16} However, the treaty also contains a chapter on Intellectual Property (IP) and Trade-Related Aspects of Intellectual Property Rights (TRIPS) that include changes in intellectual property regulations and limits on pricing and reimbursement policies. Both categories of provisions may result in an expansion and extension of patent monopolies, increased prices for pharmaceuticals, and delayed availability of generic drugs. Increasing the cost for prescription pharmaceuticals is likely to increase not only financial strain, but also cause underutilization of needed medications among vulnerable populations such as low-income people, women, minorities, the elderly and people with (multiple) chronic diseases.²⁶ It may also result in higher cost for medications at the national level: the lack of provision of government intervention in negotiating drug price in Medicare in the US, for example, cost between 15.2 and 16 billion annually.²⁷

Another very important chapter of the TTIP is the Trade in Services (TIS) chapter, which includes clauses requiring publicly run health services to be opened up to competition from private sector healthcare providers. Existing literature clearly shows that privatization of health services leads to inequities in access to healthcare and a reduction of utilization of needed care especially among vulnerable populations.⁷ Lack of health coverage is also a determinant of higher mortality and morbidities among the population.²⁸ The TIS also includes the so-called “ratchet clause” that would preclude the possibility of privatized public services being returned to state operation, which is a serious infringement against the liberty of nations to make decisions about their own healthcare system of choice. Finally, since both access to medicines and access to healthcare are matter of life and death for millions of individuals, it is plausible to argue that the TTIP infringes “the right to live.”

TOBACCO AND ALCOHOL CONSUMPTION

Another serious potential effect of the TTIP could be to undermine national laws that regulate and restrict the consumption of cigarettes and alcohol, which are responsible for an important proportion of premature deaths in both the EU and the

USA^{9,29} and a list of largely preventable morbidities including lung cancer and cardiovascular diseases.^{30,31} No study so far has estimated the potential increase in cigarettes smoking and alcohol consumption resulting from the TTIP. However, there is clear evidence that the treaty can limit the development and implementation of policies aimed at curbing both epidemics.

The TTIP contains the proposed inclusion of the Investor to State Dispute Settlement (ISDS) arbitration system. The ISDS is a mechanism that allows foreign investors to sue states hosting their investment before international private arbitration courts any time a government policy or law reduces the value of their investment. Transnational tobacco companies have proven to be very keen on using the ISDS. Philip Morris International sued Uruguay in 2010 for placing large health warnings on tobacco products, arguing that the government violated the investment protection agreement signed in 1991 between Uruguay and Switzerland (where Philip Morris is headquartered).^{32,33} Philip Morris International has also sued Australia for plain packaging of tobacco products – the removal of colours, logos and other marketing materials from tobacco containers and the placement of enlarged graphic health warnings. This is very serious because evidence showed that package design affects perceptions about the desirability of smoking,³⁴⁻³⁶ and health warnings on tobacco containers have been shown to increase awareness of the health effects of smoking and encourage smoking cessation.^{37,38}

Provisions proposed for the TTIP may also have an impact on measures to reduce excessive alcohol consumption. Reduced tariffs and increased imports of alcohol products resulting from the TTIP are expected to increase alcohol-related diseases,¹⁶ especially if concomitant [policies on] restrictions on alcohol availability, bans or limits on alcohol advertising and pregnancy warning labels are challenged on the ground that they are barriers to trade through the TBT provision. Based on evidence on the relationship between cost of alcohol and consumption, Scotland sought to introduce a minimum price of 0.53 euros per unit of alcohol. The law, however, faced substantial resistance from the alcohol industry, the European Commission and other European countries on the ground that it could generate a negative impact on trade.¹⁰

Private arbitration system can infringe against the liberty of nations

DIET-RELATED DISEASES AND AGRICULTURE

The TTIP is also designed to harmonize norms and standards on trade and weaken regulatory regimes that can affect dietary patterns and food

safety. Deregulation, however, is a potential risk factor for obesity and overweight: a cross-national longitudinal study among wealthy nations found that governments pursuing more aggressive policies of market deregulation experienced faster increases in consumption of unhealthy ultra-processed products such as fast food and soft drinks as well as faster increases in obesity.³⁹ Numerous studies have also shown that policies of trade liberalization are associated with a nutrition transition toward unhealthy ultra-processed products⁴⁰⁻⁴² that are risk factors for obesity and diabetes. A revealing example is NAFTA passed in 1994 that resulted in a significant reduction of tariffs on sugar-sweetened beverages and other unhealthy food products⁴⁰ and the penetration of transnational soft drink and fast food companies in Mexico. Between 1996 and 2006, the consumption of high-energy beverages in Mexico more than doubled among adolescents and tripled among adult women.⁴³ Mexico has now the second highest prevalence of soft drinks consumption⁴⁴ and one of the highest prevalence of diabetes in the world.⁴⁵

With regard to the potential of the TTIP to affect future and current regulations designed to promote a healthy diet, countries and TNCs have invoked the TBT provision to oppose certain food policies. In 2006, Thailand proposed the introduction of a front-of-pack “traffic light” labelling system on snack food products. The US and other countries, however, claimed that such policy violated the TBT agreement causing the Thai government to abandon the proposed traffic light system.¹⁰ Another important case in point is Chile’s new law “Nutritional Composition of Nutrients and Their Advertising,” the first regulation in the world to require label-warning statements on food products high in fat, sugar and salt.^{5,46} During a meeting discussing TBT, representatives of the EU and the US claimed that the requirements of the Chilean law were not based on relevant Codex nutrition labelling guidelines and that they would create unnecessary barriers to trade.¹⁰

If the TBT can affect food regulations, the TTIP provision called Sanitary and Phytosanitary Measures (SPS) can influence standards on risks arising from additives, contaminants, toxins or disease-causing organisms in food, beverages, feedstuffs, and plant and animal-carried diseases. The SPS provision, together with regulatory convergence, can weaken regulations on food and agriculture, with potentially serious consequences for food safety. The Centers for Disease Control and Prevention (CDC) estimated that each year, in the US, about 48 million people become sick

*Hormone-treated beef
and chlorinated chickens:
TTIP
could increase
their importation*

and 3,000 die of foodborne diseases.⁴⁷ The EU had 48,964 cases and 46 deaths in 2009, the most recent year examined.⁴⁸ Although international comparisons on mortality and morbidity due to foodborne diseases are difficult to make due to heterogeneity in data collection, under-reporting and standardization, it is generally well known that EU policies on food safety are far more stringent than those applied in the US. Finally, the TTIP is likely to lead to increased imports of hormone treated beef, chlorine treated chickens, and Genetically Modified (GM) crops that are illegal or subject to restrictions within the EU, but allowed in the US.¹⁰

ENVIRONMENTAL HEALTH

Arguably, the most serious health effect of the TTIP regards its capability to affect environmental policies. Climate change is widely considered the most important global health threat of the century and can even result in the collapse of modern civilization.^{49,50} Health consequences of climate change include heat-related illnesses and deaths, extreme weather-related health effects, air pollution-related health effects, allergic diseases, water- and food-borne diseases, vector- and rodent-borne diseases, malnutrition, storm surge-related drowning and injuries and health problems of displaced populations. It can also produce indirect health effects due to violence and conflicts resulting from climate-change related declines in basic resources.⁵¹ Climate scientists proposed that the aim of humanity should be to stop average global temperatures from rising to more than 2°C above the pre-industrial level to avoid exceeding the so-called “point of no return” of irreversible climate change.⁵² However, in order to reach this goal, researchers estimated that about three quarters of coal, oil and gas have to be considered “un-burnable carbon” and should be left in the ground.⁵³ This dramatic reduction in the use of fossil fuels, however, seems virtually unthinkable without a radical transformation of the global economy and stronger regulations limiting greenhouse gas emissions by industries and consumers. The TTIP, as argued in a 2013 paper by the Centre for International Environmental Law, can actually restrain the development of stronger environmental laws,⁵⁴ and encourage the extraction and export of fossil fuels such oil and gas. This is in line with previous FTAs and policies of the World Trade Organization (WTO) that have consistently opposed the development of stronger measures for the protection of the environment and health.⁹ During the negotiations of the Paris United Nations Climate Confer-

ence, or COP21, a leaked internal EU document revealed that European governments have instructed their representatives to oppose any discussion of measures to combat climate change that might be a “restriction on international trade”.⁵⁵ Clearly, free trade policies are incompatible with the global effort to avert climate catastrophe.

The ISDS provision is very likely to be exploited by large fossil fuel companies to sue governments that try to limit extraction and export of these fossil fuels. A revealing precedent is the case of the Canadian government sued by a US-based mining company called Lone Pine for its ban on “hydraulic fracturing” in Quebec after the passage of NAFTA. “Fracking”, a process in which energy companies inject a mixture of water, sand and chemicals into the ground in order to blast apart shale formations and extract natural gas, does not only contribute to the climate change crisis, but can also produce adverse health consequences especially among households near production sites. In spite of the paucity of studies on the topic, a recent literature review showed that possible health effects produced by hydraulic fracturing of shale include congenital birth defects, cancer and cardiovascular diseases.⁵⁶ Another case involving the ISDS provision of NAFTA regards the launch of a 15 billion dollars lawsuit by TransCanada Corp. against the US government for rejecting Keystone XL – an oil pipeline running from Alberta (Canada) to Texas (USA) – because of its potential impact on efforts to combat climate change.

POLICY IMPLICATIONS

Proponents of the TTIP claim that this trade treaty has the potential to promote health-enhancing determinants such as economic growth and employment and may generate positive effects in terms of population health. Opponents of the agreement argue exactly the opposite. Our review suggests that although some studies have supported the hypothesis that the TTIP will have a positive impact on economic and employment indicators, these changes may not necessarily “trickle down” to the lowest socioeconomic strata of the population. On the contrary, trade liberalization policies tend to produce regressive distributional effects. Tariff reduction, for example, can reduce the tax-raising capability of governments to invest in health, social welfare and education, with obvious repercussions on economic inequality and public health outcomes. Another potential danger of the TTIP regards the use of ISDS by TNCs to challenge policies that reduce economic inequality. A case in point regards the legal ac-

TTIP poses a threat to universal access to healthcare

tion by Veolia group – a French TNC – that sued the Egyptian government for raising the minimum monthly wage.^{22,57}

Further evidence and impact assessments are needed to further inform negotiators on the likely impact of the TTIP on health outcomes. However, available evidence presented in this article provides a cautionary tale on the potential influence of this treaty on determinants of health such as access to medicines and healthcare, tobacco and alcohol consumption, diet-related diseases and agriculture and environmental health. By reducing Technical Barriers to Trade (TBT) and by promoting increased cooperation between US and EU governmental agencies in the pharmaceutical sector, the TTIP may result in improved research cooperation and reduced duplication of processes. However, the TTIP chapters on Intellectual Property (IP) and on Trade-Related Aspects of Intellectual Property Rights (TRIPS) that expand and extend patent monopolies, and delay the availability of generic drugs, are likely to cause underutilization of needed medications among vulnerable populations. The TIS chapter, that includes the so-called “ratchet clause” would preclude the possibility of privatized public services being returned to state operation, and would thus be likely to reduce access to universal healthcare among the most vulnerable sectors of the population.

The TTIP’s ISDS private arbitration system is likely to produce a negative impact on regulations aimed at increasing access to medicines and healthcare, and policies that reduce tobacco use, alcohol consumption and diet-related diseases. The Sanitary and Phytosanitary Standards (SPS) chapter of the TTIP is expected to weaken regulations in the food and agricultural sectors especially in the EU, with potentially negative effects on food safety and food-borne diseases. Finally, the ISDS is likely to impair the ability of governments to tackle environmental problems such as climate change, deemed to become the most important global health threat of the century.

Proponents and critics of the TTIP tend, in general, to use different approaches in assessing the evidence on its potential effects. Proponents are generally in favour of an approach to regulation that allows for a ban or restrictions to a given product or service only after full evidence that such product or service is harmful to health is provided and total certainty is achieved. The WTO, TNCs and the USA support this approach. In 1998, for example, Canada and the US imposed sanctions amounting to 150 million dollars on the EU in retaliation for a ban on hormone-treated beef imports by the EU^{2,58} on the grounds that there was insufficient ev-

idence to support the ban. Some have called this “evidence-based approach” in contrast to the “precautionary principle approach” that states that lack of full scientific certainty does not justify postponement of measures that can protect population health and the environment.^{16,59} In reality, the “precautionary principle approach” relies on evidence as much as the so-called “evidence-based approach”, with the difference that it shifts to proponents of new products or policies the responsibility for demonstrating the safety of such products and policies based on scientific evidence. Accordingly, it is up to the proponents of the TTIP to demonstrate empirically, before the partnership is approved, that the treaty is not harmful to population health and the environment.

Proponents of the TTIP claim that the treaty will promote the exchange of needed goods and services between countries without causing a “race to the bottom” impairing regulations to protect public health and the environment. In reality, however, historical evidence already exists and shows that FTAs can discourage regulations on access to medicines and healthcare, tobacco and alcohol consumption, diet-related diseases and agriculture and environmental health. Moreover, the ability of TNCs to raise legal challenges against states that adopt public health regulations under the ISDS as well as the irreversibility of privatization of healthcare services limit “health policy space” or the freedom of governments to choose, design and implement healthy public policies. Furthermore, as Susan George has noted, there is no reciprocity on the TTIP: TNCs can sue governments, but not the other way round, nor can the private arbitration tribunal’s decision be appealed.⁶⁰ This has serious implications for democracy. There is already evidence that FTAs such as the TTIP can promote so-called “regulatory chill” – any impact that market forces can produce on public policy regulators when they persuade them to refrain from developing, introducing and revising regulations aimed at protecting health and the environment.¹⁰ The threat of litigation has already produced an impact in New Zealand where the government explicitly announced that it had postponed plain packaging legislation until the Philip Morris vs. Australia case

*The right to profit
must not prevail over
the right to health*

was resolved.⁵ Another case in point concerns the Canadian Government that stepped back from the initial commitment to introduce plain packaging in 1994 because of threatened action under the ISDS of NAFTA.⁶¹

When considering the “ratchet clause” that locks in current or future privatization of healthcare services, the Dutch firm Achmea sued the Slovak Republic over the impending expropriation of private health insurance companies linked to the Slovak’s government’s plan to develop a single state-operated health insurance company.^{10,22} This is clearly another blatant example of how the TTIP can infringe the ability of governments to determine their own policies and undermine national sovereignty.

Overall, the TTIP may not only affect public health outcomes negatively and undermine democracy, but also produce a further imbalance of power between large private companies and the public. It is important to stress that the top TTIP lobby

groups represent corporations and about 92%

of consultation meetings for the TTIP prior to

the opening of the negotiations were carried

out with these private companies or their

representatives.⁶² There has been little

or no involvement of civic society or

organizations and public health profes-

sionals in spite of the likely effects of

the TTIP on social and health out-

comes. Moreover, negotiations have

been long kept in secret and they

have become public only after the or-

ganized efforts of civic society.⁶³

Most critics of the TTIP harbor no ide-

ological preclusion against healthy free

trade agreements, cooperation or harmoniza-

tion of policies and regulations between the EU and

the USA. However, trade policy should not treat regula-

tions designed to protect public health as technical barriers

to trade, and the “right to profit” should not be prioritized

over “the right to health”.⁶⁰ Harmonization of regulations,

norms and standards may indeed be desirable, but in the

direction of a stronger protection of the environment and

population health.

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